

January 29, 2008



**TRANSCRIPT
January 29, 2008**

MONTGOMERY COUNTY COUNCIL

PRESENT

Councilmember Michael Knapp, President	Councilmember Phil Andrews, Vice President
Councilmember Roger Berliner	
Councilmember Marc Elrich	Councilmember Valerie Ervin
Councilmember Nancy Floreen	Councilmember George Leventhal
Councilmember Marilyn Praisner	Councilmember Duchy Trachtenberg



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1 President Knapp,

2 Good morning, everyone. Welcome to the County Council. We have a couple of large
3 proclamations this morning. But before we get started, I would ask everyone to please
4 rise. We typically start with a prayer or moment of silence, this morning we are having a
5 moment of silence. A number of our colleagues this morning are actually at the funeral
6 of Mr. Dewey Thomas, who was a local businessman and friend to the community of
7 Silver Spring and the County as a whole, and so I'd ask you during a moment of silence
8 to keep Mr. Thomas and his family in your thoughts and prayers. Thank you very much.
9 We now have a joint proclamation in recognition of Asian Lunar New Year celebration
10 by myself and County Executive Leggett, who is here. Well, as we're getting everyone
11 up here, it is truly an honor and pleasure to have the County Executive join us this
12 morning and have representatives of our Asian community, all facets of it, to join us
13 leaders one and all. Clearly, Montgomery County has grown significantly. The Asian
14 community are representing nearly 14% of our County's population. But it's just -- it's so
15 exciting to me to see the impact and the growth, especially the celebration of Lunar New
16 Year. My daughters went to the Matsanaga Elementary School, and the most exciting
17 holiday I think they celebrate each and they look forward to each year is the celebration
18 for Lunar New Year. And I'll be honest, as a child growing up, I didn't even know what
19 Lunar New Year was, and so to have my children now think about it, know it, accept it,
20 and be so excited about it, to me just shows how we as a County are growing and
21 diversifying and the excitement that -- all those cultural elements bring to our
22 community. And so we have a proclamation -- a joint proclamation for the County
23 Executive and myself -- I want to see if the County Executive has some words to share
24 before we do the proclamation.

25
26 County Executive Leggett,

27 Thank you very much, and thanks the County Council for joining in this recognition this
28 morning. We are very excited about the great diversity that we have in Montgomery
29 County. I believe it is part of our strength. What we see before us here is a large array
30 of just a sample of the free diversity we have within the Asian community; a community,
31 I think, that is represented well by the many organizations and the involvement, whether
32 from the education or professional side, you name it, they're an integral part of this
33 community. And so I want to simply join with you in recognition of the Lunar New Year.
34 And also the recognition that Maryland -- this is the second anniversary of the
35 community Lunar New Year for the state of Maryland, and it's one of first in the entire
36 country to so recognize it. So congratulations, we're now prepared to give the
37 proclamation. Proclamation Montgomery County, Maryland: Whereas, the Asian
38 American community now represents 14% of the population of Montgomery County;
39 and whereas the Asian Americans enhance the quality of life of Montgomery County
40 residents through their contribution to every professional field; and whereas the Lunar
41 New Year is one of the most important holiday for numerous Asians, especially those of
42 Chinese, Korean, Vietnamese decent living in Montgomery County making a time of
43 reunion, renewal and celebration; and whereas the Lunar New Year is observed by a
44 great number of Montgomery County residents and affords others the opportunity to



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1 acquaint themselves with the Asian customs and traditions; whereas February 7, 2008,
2 marks the beginning of the year 4706 in the Lunar Calendar which will be celebrated as
3 the Year of the Rat. Now, therefore, do we, Isiah Leggett as County Executive, and
4 Michael J. Knapp as County Council President, hereby proclaim, Thursday, February 7,
5 2008, as Lunar New Year day in Montgomery County. We encourage residents to share
6 in the celebration and to take time to learn more about the contribution that Asian
7 Americans make to our community. Signed this day, Isiah Leggett as County Executive
8 and Michael J. Knapp as Council President. Congratulations.
9

10 President Knapp,
11 Congratulations.
12

13 Unidentified,
14 If you have the proclamation, hold it.
15

16 President Knapp,
17 I ask everyone to bear with us as we try to do the change-over between the celebration
18 for Lunar New Year the recognition for the Quince Orchard High School Football
19 Championship.
20

21 Vice President Andrews,
22 Good morning, everybody. This is becoming a regular thing having the Quince Orchard
23 Cougars come up here to receive recognition for a state championship, and what a
24 state championship this was. The Quince Orchard Cougars had an undefeated season,
25 14-0, and came back making a remarkable comeback in the championship game to
26 score 29 points in the last 7 minutes, to overcome a large deficit to win the
27 championship; probably one of the most amazing comebacks in high school football
28 history. Along with the other teams at Quince Orchard that have won state
29 championships in the past year or so; we had the girls' soccer team in here, we had the
30 -- .
31

32 President Knapp,
33 Cross country team.
34

35 Vice President Andrews,
36 Field hockey, cross country the last couple of years, and the baseball team a couple
37 years ago, and some individual championships as well. It is a real tribute to the strength
38 of the program, the athletic director, who is with us today, John Lubinetsky and Bob
39 Glass, who is the assistant football coach; Dave Mencarini, the head football coach. A
40 team effort and what remarkable resilience to come back and not give up. That's real
41 character. Carol Working, the Principal, is with us as well. And it's good to see you
42 again. So I just want to congratulate, along with Council President Mike Knapp, this
43 wonderful season by this team that I know you will remember for the rest of your lives,



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1 and best wishes as you go on. And Council President Mike Knapp is going to do the
2 honors of the proclamation.

3
4 President Knapp,

5 Well, it's truly a pleasure to welcome you all back again. I'm just curious if anybody
6 actually went to classes this fall. I'm hopeful. I'm sure that we're creating well-rounded
7 students. It's wonderful. It's been a tremendous year, and I live around the corner, so it's
8 been great to watch. I actually made it to a couple games this year as well; tremendous
9 team. The proclamation on behalf of the Council. Whereas, building a successful high
10 school football program requires organization, dedication and year-round hard work in
11 the weight room, on the practice field and the film room, and studying the playbook -- all
12 of which the 2007 Quince Orchard Cougars demonstrated; and whereas, the Quince
13 Orchard High School football team distinguished itself as it finished 14-0, earned the
14 No. 1 ranking in the Washington Metropolitan region as selected by the Washington
15 Post, and capped a remarkable season by defeating previously unbeaten Arundel (13-
16 1), 36-30, to win the Maryland 4A state championship; and whereas, the Cougars
17 finished their final game in championship-like fashion, scoring 29 points in the final 7
18 minutes and 13 seconds -- a little background music -- in 7 minutes and 13 seconds of
19 the title game at M&T Bank Stadium in Baltimore to rally from a 16-point deficit for a 36-
20 30 victory; and whereas, Coach Dave Mencarini's team was so dominate in winning the
21 school's second state championship that allowed only 10.6 points per game and
22 outscored opponents by an average of 23 points per game; and whereas, all the
23 players, their coaches, their families and their supporters deserve hardy kudos for
24 setting their sights high and realizing their dreams; now, therefore, be it resolved that
25 the Montgomery County Council congratulates Quince Orchard High School football
26 team; and, be it further resolved, that the Montgomery County Council joins the entire
27 Quince Orchard community in recognizing this wonderful achievement of bringing home
28 the championship banner to Montgomery County. Presented on this 29th day of January
29 in the year 2008; Michael J. Knapp, Council President.

30
31 Vice President Andrews,
32 Congratulations.

33
34 Dave Mencarini,
35 Can I say something?
36 Vice President Andrews,
37 Sure

38
39 Dave Mencarini,
40 On behalf of our outstanding Principal Carol Working, our Athletic Director John
41 Lubinetsky, and our entire coaching staff, and our entire coaching staff, it truly was a
42 team effort. The 60-some young men you see here were very resilient throughout the
43 year dealing with adversity both on and off the field. The life lessons that they learned
44 through this championship season, hopefully they're going to take with them into



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1 adulthood, and especially the final game, the state championship where facing such a
2 deficit, really the first time all year we had really been behind. It shows the true
3 character of the guys here. It really was a special group. It takes a tremendous amount
4 of luck to win a state championship. We were lucky, but we were also pretty good as
5 well. So thank you very much on behalf of Quince Orchard and the community. We
6 accept this award. Thank you very much.

7
8 Vice President Andrews,
9 How many seniors do you have on the team, Coach?

10
11 Dave Mencarini,
12 We have 27 seniors.

13
14 Vice President Andrews,
15 Who are the seniors? Raise your hand. Okay, all right. So about half the team, roughly?

16
17 Dave Mencarini,
18 Yep. We have an outstanding group of guys coming back.

19
20 Vice President Andrews,
21 Great. Good foundation.

22
23 Dave Mencarini,
24 Definitely.

25
26 Vice President Andrews,
27 Now, the toughest part of this is actually trying -- the tougher part, I think tougher than
28 the season is going to be getting everybody in the picture. That's a real challenge. So it
29 looks like you pretty much arranged it by height so far, but you might to just make sure
30 you can see the old guy with the camera.

31
32 President Knapp,
33 Okay. We've moved a lot of groups through this morning -- or at least a lot of people
34 through. I now turn to Madam Clerk for general business.

35
36 Linda Lauer,
37 Good morning. We have -- on the -- just one note, the minutes that are before you for
38 approval today are actually January 15th, not January 11th. And then there are a couple
39 changes. We're going to adjust the schedule a little to accommodate the funeral for
40 Dewey Thomas. The item on the briefing for Live Nation we're moving to 1:15 this
41 afternoon, and, therefore, the interview for the Bethesda-Chevy Chase Regional
42 Services Center, that interview will happen at 10:15. So there will a little break before
43 the 11:30 lunch meeting. Also, the -- we just need to announce that the public hearings
44 that had been planned for this evening have been postponed until next Tuesday



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1 afternoon. That's on Bill 38-07, Moderately Priced Dwelling Units, and the Zoning Text
2 Amendment, 07-17, Growth Policy Special Exceptions and Local Zoning Map
3 Amendments. Those were postponed because there were only a few speakers that
4 were going to speak, so we're moving them to the afternoon next Tuesday. And we did
5 receive one more petition this week from residents opposing the discontinuation of the
6 Call and Ride coupons.

7
8 President Knapp,
9 Hopefully, we should get them a copy of our letter. And let them know what the
10 Council's action was last week. I also want to note again for the record that
11 Councilmembers Leventhal, Floreen and Ervin are on Council business attending a
12 funeral. And with that, Madam Clerk, do we have any minutes to approve?

13
14 Council Clerk,
15 We have the minutes of January 15th for approval.

16
17 Councilmember Praisner,
18 Move for approval.

19
20 President Knapp,
21 Moved by Councilmember Praisner,

22
23 Vice President Andrews,
24 Second.

25
26 President Knapp,
27 Seconded by Council Vice President Andrews. All in favor of the minutes? That is
28 unanimous. Thank you very much. We now move to the consent calendar. Is there a
29 motion?

30
31 Councilmember Praisner,
32 Move approval.

33
34 President Knapp,
35 Moved by Councilmember Praisner. Second?

36
37 Vice President Andrews,
38 Second.

39
40 President Knapp,
41 Seconded by Council Vice President Andrews. Are there any comments?
42 Councilmember Trachtenberg.

43
44 Councilmember Trachtenberg,



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1 Thank you, President Knapp. I just want to acknowledge the receipt of the Legislative
2 Oversight report on the Department of Health and Human Services; specifically, their
3 review of the FY07 Behavioral Health and Crisis Services staffing. This was my request
4 that I made last spring, and I am delighted with the content of the report, and I know that
5 it's going to provide excellent information as we, again, look at the budget this spring.
6 And I want to thank, in particular, Leslie Rubin and Jennifer Rankama for their excellent
7 effort on behalf of the Council. So thank you again for a job very well done.

8
9 President Knapp,
10 Thank you. Councilmember Praisner.

11
12 Councilmember Praisner,
13 I wanted to comment on the same thing. I think it's an excellent overview of a very
14 complicated department with all of its components and elements. So I think you guys
15 did a terrific job. My thought, though, is that the questions the Council committee might
16 want to ask itself is, how do we proceed from here from a budgetary perspective, and
17 from a program effectiveness perspective rather than focusing on recordkeeping related
18 to staff or contractual relationships that we really need to look at how we -- how well the
19 programs are working and what the appropriate outcome measures, et cetera, should
20 be, from my perspective. So that's just my thought.

21
22 President Knapp,
23 Councilmember Andrews?

24
25 Vice President Andrews,
26 Thank you, Council President Knapp. I wanted to also comment on the same item and
27 just note that although the Office of Legislative Oversight is very, very familiar to those
28 of us here at the Council, it may not be as familiar to the public, but it is really the -- the
29 research arm of the County Council. And I've got no doubt that it's one of the premiere
30 organizations of its kind in the country, and they continue to produce the office excellent
31 reports that form the basis of many of the actions that we take here, and I don't think we
32 can say enough good things about their work. And I'm sure that they don't mind. So
33 congratulations on a good job.

34
35 President Knapp,
36 Councilmember Trachtenberg.

37
38 Councilmember Trachtenberg,
39 I just want to actually respond briefly to what Councilmember Praisner raised. Again,
40 you know, the exercise was to create a baseline by which we could do exactly what you
41 described. And the good news is that we've got some fellows that will be working with
42 us here through my office, and I expect to circulate a memo next week. I mentioned that
43 to both Leslie and Jennifer with some suggestions on exactly the kind of exercises that
44 Marilyn -- that Councilmember Praisner was raising as legitimate ones. So I look



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1 forward to it, and I'm sure that Leslie and Jennifer will have an active role in what we do
2 here.

3
4 President Knapp,

5 Well, well-deserved kudos to the Office of Legislative Oversight for another job well
6 done. Congratulations. I also wanted to comment on Item C - Resolution regarding the
7 use of the Housing Initiative Fund for Advanced Land Acquisitions, and wanted to
8 commend the PHED Committee for bringing this resolution to us. Clearly the Housing
9 Initiative Fund is an important element for county government to address homelessness
10 and housing issues, especially as we look at affordability in our community. And what
11 those resources are used for, I think, is a critical point for discussion, and a legitimate
12 policy discussion between the Council and the County Executive. And I think for the
13 PHED Committee to have examined this as they have and identify the fact that we have
14 resources to use for advanced land acquisitions and that perhaps we can use the
15 Housing Initiative Fund to actually focus more on housing activities was exactly the right
16 approach. And I appreciate their efforts in bringing that to the full Council's attention. I
17 see no more comments. All in favor of the consent calendar indicate by raising your
18 hand. I see every one -- it's unanimous among those present. We now turn to District
19 Council session. We have action on Development Plan Amendment DPA 07-2. Mr.
20 Berliner.

21
22 Councilmember Berliner,

23 I, for one -- I haven't gotten -- didn't get the packet.

24
25 President Knapp,

26 I was actually going to ask if people had received it.

27
28 Councilmember Berliner,

29 Yeah. I feel like this is -- caught some of my colleagues are looking at it for the first time.
30 I don't think we're in a position to act on this today.

31
32 President Knapp,

33 I was in a similar situation this morning as well, and I wanted to check with
34 Councilmembers. If that is a unanimous feeling, which I think that it is, I would suggest,
35 since we have to come back this afternoon that we do that. Councilmembers take the
36 opportunity between now and the conclusion of our discussion on Live Nation, and we
37 come back this afternoon to do it. So I don't know what was the situation, but I know
38 Councilmembers -- or at least I didn't have it until I went looking for it at 9:25. So I don't
39 know what the breakdown was in getting information back and forth, but I didn't have -- I
40 mean, I skimmed it in 10 minutes. I'm not sure that puts us in a position to be able to
41 vote.

42
43 Francoise Carrier,



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1 Part of it is the fault of my office. We got confused about dates, and the -- the report was
2 ready and was in your packet, I believe on Friday.

3
4 President Knapp,
5 No. We didn't get that, either.

6
7 Francoise Carrier,
8 I had understood that the report was going in your packet and the only the resolution
9 would be given to you on Monday. Well then we had multiple layers of mistakes. My
10 apologies.

11
12 President Knapp,
13 Well let me ask Councilmembers; do you think by -- is there time between now and the
14 afternoon's session for Councilmembers to review it appropriately? Or would we like to -
15 - ?

16
17 Councilmember Praisner,
18 I personally don't think so.

19
20 President Knapp,
21 Madam Clerk, can we -- and I apologize for the applicants, because I know this is
22 frustrating for them, but I would rather have us be informed than to make an injudicious
23 decision.

24
25 Vice President Andrews,
26 I think it's better to postpone it a week, because it might be possible for some of us
27 here, but we also have colleagues who are at a funeral this morning who probably
28 would not be able to review it between now and the afternoon.

29
30 Councilmember Praisner,
31 Yeah.

32
33 President Knapp,
34 Ms. Lauer, do we have availability for next -- okay, so we'll reschedule that for next
35 Tuesday. And I apologize for those who made the trek in and stayed through two
36 proclamations.

37
38 Councilmember Berliner,
39 Is there any consequence of postponing that we should be aware of for a week?

40
41 Unidentified,
42 Will you increase the density?

43
44 President Knapp,



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1 That was a good and ready answer. Okay, so we'll postpone this till next Tuesday at a
2 time to be determined by Ms. Lauer. Okay. Thank you very much. We now turn to
3 Legislative Session day number 3. We have approval of Legislative Journal. Madam
4 Clerk?

5
6 Council Clerk,
7 The Legislative Journal of December 4th, 11th and January 15th are for approval.

8
9 Councilmember Praisner,
10 So moved.

11
12 President Knapp,
13 Moved by Councilmember Praisner. Seconded by Councilmember Trachtenberg. We
14 have before us approval of Legislative Journal; all in support raise your -- indicate by
15 saying aye or raise your hands. That is unanimous among those present. We now turn
16 to introduction of bills, Bill 2-08, Consumer Protection - Domestic Workers -
17 Employment Contracts, sponsored by Councilmembers Elrich and Leventhal. There is a
18 public hearing scheduled for February 26th at 7:30 p.m. I see no comments. With that
19 we actually have concluded our morning business. We now have an interview with
20 County Executive's appointee for the Director of the Bethesda Chevy Chase Regional
21 Services Center in the sixth-floor Council conference room. The Council will stand in
22 recess until 1:15 when we'll come back for a briefing on the process used for decisions
23 regarding LiveNation/J.C. Penney building in Silver Spring.

24
25 Councilmember Praisner,
26 I just want to comment. The County Council meets monthly with the County Executive,
27 and in the November meeting with the County Council, the Executive was talking about
28 a variety of things, including LiveNation, and made reference to the process that the
29 County had used to determine LiveNation as well as the fact some of the brief
30 comments about the next steps. And it was in that context that as Council President, I
31 asked for a briefing not only of going forward but also the process used to get to
32 LiveNation. So I hope when we receive our briefing that -- today that it will incorporate
33 both of those points. I know the packet deals with the lease and with the financial
34 information, but I didn't see anything about the process used to get to the LiveNation
35 determination.

36
37 President Knapp,
38 Well, and just so you know, Councilmember Praisner and other Councilmembers, in the
39 conversations I've had with the Executive Branch, I have been very clear that it is not
40 just on what has already been executed but on the process that got us to that point. So
41 it is my hope that we hear that as well. And clearly a number of Councilmembers have
42 voiced a very similar concern. So with that, we're in recess until 1:15.

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1 Council President Knapp,

2 Good afternoon. Our last item for Council business today is an update from the CAO on
3 the briefing, the process used by the County for decisions regarding LiveNation/J.C.
4 Penney building. I welcome Mr. Firestine, our CAO and Assistant CAO, Diane
5 Schwartz-Jones. There are obviously lots of questions. There has been lots of
6 discussion on this issue. This is the first time the Council has had an opportunity as a
7 body to have heard where the Executive Branch is as it relates to the process and to the
8 agreement that has been executed. And I think it will be important for us to know and
9 understand that. Just for the benefit of my colleagues, I know that there are a number of
10 questions that certain Councilmembers have and I know that there are, this engenders
11 a fair amount of passion on the part of some and so I'd urge everyone to be respectful
12 and have a good dialogue. And I know there will be a number of questions and so once
13 Mr. Firestine completes his briefing, what I'll do is we'll just start from my left and work
14 our way down through and if Councilmembers have questions, great, we'll take your
15 turn in line and then if not, we'll just go to the next person. And then if we need for
16 follow-up questions, we'll go from there. So with that, welcome Mr. Firestine.

17
18 Tim Firestine,

19 Thank you. So, what I'll do is, I'd like to start, I know we have members of the Council
20 who came into, I'd say, this project sort of midstream. So I wanted to step back even a
21 little bit further from the point at which they entered into this just to give a little bit more
22 of the history. And where I'd like to start is, the project actually started in Bethesda
23 where there is the project, the residential project, the Whitney Project, which was
24 required as part of its land use approvals, in those days, to restore the former Bethesda
25 Cinema 'n' Drafthouse. You may recall that. And it was the developer at the time who
26 approached the Birchmere as the operator of that facility. And they together contacted
27 the Department of Economic Development and asked the Department of Economic
28 Development if the County would be willing to offer any incentives to make this project
29 work. The County, Department of Economic Development had come to the Council, we
30 had approached the state, the County Council at that time had approved \$375,000 as
31 an Economic Development grant for this project in Bethesda. Working with the state it
32 was a grant that was to be matched by the state, \$375,000 from the state. And so, the
33 package was basically structured that way. However, due to the inability of the
34 developer and the Birchmere to reach terms on the project, that possibility fell through
35 as an economic project there. And as you know, Economic Development, because we
36 had money allocated to this and we were getting money from the state, they didn't want
37 to lose this opportunity and so they looked for other places in the County where this
38 concept might fit. And in those days, one of the prime locations was the Silver Spring
39 area, the side of Colesville Road that had not yet seen revitalization that had occurred in
40 the rest of Silver Spring. And the thought was, you know, to finish this part of Silver
41 Spring, this looked like a good opportunity. We had the J.C. Penney's building which
42 was sitting vacant for 18 years. This looked like a good opportunity to try to have the
43 same thing happen there. So, in this case, at that point, Economic Development worked
44 closely with the Lee Development Group who owned the parcel of land where the J.C.



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1 Penney's building sits on and also with the Birchmere. And that was over five years ago
2 when that transaction started to develop. And made its way through five years of
3 discussions. Many variations of the deal were structured throughout that period of time.
4 Quite a bit of money was spent by the Lee Development Group and by the County on
5 feasibility studies, designs, but the project kept changing. It kept getting smaller. It was
6 a venue that started at about 800 participants and was in the 450 to 500 range. It also
7 became apparent during that period of time, that in looking at structure of the facility that
8 the original money that was allocated for the project was not going to be enough. And
9 so, suddenly, more public support was felt to be needed to make this project successful.
10 That takes us up to, you know, the capital budget last year, the FY08 capital budget,
11 which did include money approved by you for a sole source transaction at this site, with
12 the Birchmere. It included, and again, I'm sort of picking out where Mr. Leggett came
13 into office. Mr. Leggett worked hard, as some of you did, with the state to enlist state
14 support for this project and we did get state support for this project. Again, it looked like
15 the right project for this part of Silver Spring and I think that we were all encouraged by
16 that. What is not encouraging was the fact that we were reaching a point in our
17 negotiations with the Birchmere where we just couldn't get the deal. There was a lack
18 of, as I said, the project had changed. We got to the point where, as you know, in the
19 Birchmere project, the kitchen was never a major part of that project and it was clear
20 there wouldn't be enough money in the project to pay for the kitchen, there was an
21 unwillingness on the part of the Birchmere to put more money into the project.
22 Documents, we never had really final documents, we never had a letter of intent. That
23 project just got to a point where we were stalled. Mr. Leggett was at that point
24 considerably concerned about the fact that we had approval for what was a good
25 initiative for Silver Spring, had, you know, good support by the Council, good support
26 from the state, had resources that were being allocated to this project, and decided
27 actually to suspend negotiations with the Birchmere. And I use the word suspend
28 because that's exactly how we referred to it when we communicated with them. Is that
29 we had spent a considerable amount of time trying to get this to a point where we felt
30 comfortable something was going to happen and nothing was happening and so we
31 said, let's suspend negotiations and, quite frankly, it was to see if there was other
32 interest out there so that we could get this project moving, which I think after five years
33 did certainly seem reasonable. So, we did send a notification. During that period of time,
34 once we suspended negotiation, a couple of things. Mr. Leggett did want us to work
35 quickly to ensure retention of the state funds, because, as you know, if you don't keep
36 the transaction moving, the state is going to use the money other places. So we did ask
37 for, we looked around for interest that was out there. When I say, it was quickly
38 apparent once word got out that we had suspended the deal with the Birchmere, which I
39 believe the Birchmere quickly said they had terminated their transaction with the
40 County. You know, as word is out there, we did start hearing from interested parties.
41 Primary interest was LiveNation who had approached the Lee Development Group first
42 and had talked to them because, I think, of their interest in opening one of their other
43 products in the D.C. area, the House of Blues. There were some initial discussions
44 about, you know, possibilities of doing something in Silver Spring, although, I recall in



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1 those days, they felt the House of Blues was not the right fit for Silver Spring. But, they
2 had another unique product, which was only in, I believe it was six cities in the country,
3 top cities, San Francisco, Detroit, New York, Philadelphia and I think they were getting
4 ready to build their venue or get into their agreement in Miami. But it was a, we felt it
5 was a fairly elite product and we thought it was a good opportunity for Silver Spring. In
6 addition, we had interest from two other parties. One party was a blues club out of New
7 York where we thought it was an interesting proposition but it was very specifically, fairly
8 narrow, defined and I think what we wanted to do was try to provide a venue here that
9 had a good variety of music. And then we also had interest from a very small venue in
10 Takoma Park, I think it's called Takoma Junction. But again, we thought in terms of the
11 County investment that that wasn't a very good fit. We felt very comfortable that, you
12 know, having gone through the negotiations with Birchmere, we felt having a company
13 of the stature of, you know, a LiveNation, which had resources they could bring to the
14 project, also the professionalism of the organization, and the fact that they had this
15 unique product that they were willing to bring to Silver Spring. We thought, you know, it
16 was a good fit. Also at the same time while we had this interest, Mr. Leggett decided he
17 wanted to meet with the community. Part of it, the outgrowth from concerns about the
18 fact that we had discontinued our negotiations with the Birchmere. But Mr. Leggett, over
19 the summer, last summer, had a couple of meetings with community representatives
20 and it was clear that he wanted to see community participation, community input in
21 terms of shaping whatever the product was that we were going to do. And certainly
22 during that period of time we were open to any interested party offering up a venue for
23 this location. We also had spent quite a bit of time meeting with community groups. We
24 meet with the Silver Spring Citizen's Advisory Board, PRESCO, East Silver Spring Civic
25 Association, Silver Spring Urban District Advisory Committee, Woodside Civic, Silver
26 Spring Chamber. So, there were a lot of community meetings going on and quite frankly
27 provided some very profitable input I think to the LOI and then ultimately to the lease
28 that we finally developed with LiveNation. Also, during this period you may recall, prior
29 to the signing of the LOI, we were meeting individually with Councilmembers to
30 understand what your issues were and you had some good input and also to try to get a
31 sense of what the Council's support even though we did it individually, we didn't come to
32 the full Council, we did have an approved project and we thought we would see if the
33 support was still there for this project. And I will say, after those meetings, we do believe
34 that we felt we had support from the Council to proceed. We did sign the LOI, which
35 was out public at that point. And then, you know, we moved, as indicated in the LOI,
36 what the process was, the process was to move into a lease negotiation phase with
37 LiveNation. And so we finally, a little over a week ago, signed the lease with LiveNation.
38 Now, I can go into the terms if you want to do that now. Or we can wait. I know you
39 wanted to talk process. But I think that you will see that the product we came out with is
40 a much better investment for the County than the earlier initiative was. We can show
41 you in the numbers that there is a good return on investment of this project. We did an
42 internal rate of return calculation, factoring in the tax revenues. This building will pay
43 taxes. It is an Arts and Entertainment District so there is some benefit. The facility pays
44 rent, but the return on investment, the IRR comes out to 11.4%, which I think measured



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1 in terms of investing, is a pretty good investment, certainly beats the County's hurdle
2 rate. It's also a good investment in terms of the County puts in \$4 million and we end up
3 with a facility that is worth 13 and a half, so there's also a capital appreciation that
4 comes to the County. I venture to say, I have been involved in many Economic
5 Development initiatives over the years. I think this one has a higher rate of return than
6 any including the conference center that I've been involved in in the past. So, I think
7 we've shaped a deal. It's got good community use, community participation. Some of
8 the adjustments that we made, I know there were concerns about alcohol sales.

9
10 Council President Knapp,
11 Tim, go ahead and just walk through all that, I mean, just, I would do the overview of all
12 the terms, just so everyone's got that.

13
14 Tim Firestine,
15 Okay.

16
17 Council President Knapp,
18 That way we can go to questions and you'll have both.

19
20 Tim Firestine,
21 Okay, well, what I'm going to do on the deal itself, I'm going to turn it over to Diane to
22 actually walk through that and then we'll come back to the numbers. So, Diane.

23
24 Diane Schwartz-Jones,
25 Okay. Thank you.

26
27 Council President Knapp,
28 Sure.

29
30 Diane Schwartz-Jones,
31 Good afternoon, Mr. President, Councilmembers. This deal, it is a lease. The term of
32 the lease is 20 years. There are two five year options to renew. The way the deal is
33 structured, the property is being provided by the Lee Development Group at no charge
34 to the County. Plus, the Lee Development Group is going to be providing their
35 development services. The property is estimated by the Lee Development Group to
36 have a value of approximately 3 and a half million dollars plus the value of development
37 services would be somewhere in the \$400,000 range. The state, as Mr. Firestine has
38 indicated, is putting in \$4 million. The County is putting in \$4 million. And LiveNation has
39 committed to put in a minimum of \$2 million to tenant fit out and finishings and also will
40 be responsible for any overruns that occur and that are not addressed through value
41 engineering. The facility itself is to be maintained by LiveNation and this means both
42 operating maintenance and capital maintenance. LiveNation, as Mr. Firestine indicated,
43 is going to pay all of the property taxes, the PLD taxes, all the – associated with the
44 property. The rent is initially \$90,000 per year for the triple net, net, perhaps even one



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1 more net, lease. And that will be escalating in five year increments. It goes up. The use
2 is defined to be a first class live entertainment venue. And LiveNation is in fact held to
3 the standard of its operating Fillmore's across the country. And that is for the duration of
4 the lease. I would also like to mention that the lease is not assignable without the
5 permission of Montgomery County so that we know that we are always having the type
6 of venue that we expected to have here. We also negotiated additional fiscal benefits.
7 There is an annual payment to the Celebrate Silver Spring Foundation, which is an
8 organization that provides programming in downtown Silver Spring for community,
9 County wide events. So, that will be a annual payment. There is a guaranteed minimum
10 of 36 free and heavily subsidized County and community uses of the facility each year.
11 The County is assured of three free facility uses, there are three free charitable uses per
12 year. And then there will be 20, a guaranteed 20 community uses at 20% of the facility
13 market rate, which must at no time exceed \$3,000 per use, and that's for the life of the
14 lease and per year. Ten community uses, after that 20, the next 10 is at 40% of the
15 facility market rate, not to exceed \$3,000 per use for the life of the lease. As I indicated,
16 these are guaranteed, 36 guaranteed County/community uses per year. But, that is the
17 floor, not the ceiling. There can be additional community uses of the facility at a
18 guaranteed \$3,000 per use for each use above those 36 uses, and that is for the
19 duration of the lease. And that amount, by the way, that cost will not escalate. There are
20 6 complimentary tickets to the County for each event for Economic Development and
21 County relations activities. There will be an annual auction which will be conducted and
22 sponsored by LiveNation and the proceeds from that auction will go to support a charity
23 or benefit that Montgomery County designates. There will be, at each event that
24 LiveNation conducts they will get the artist to autograph two memorabilia and those are
25 the items that will be auctioned off at that event. We have every reason to believe that
26 that event will be quite successful because of their experience and expertise at putting
27 on similar types of fundraising events. They've successfully produced programs such as
28 Live Earth concerts in New York, London, Washington D.C., Shanghai and Hamburg,
29 the concert for Diana, the Paul Simon Library of Congress concert, and the recent
30 Virginia Tech benefit concert, and the Pray for Peace concert at Washington Cathedral
31 in October. So, they have extensive, extensive experience doing very large fundraising,
32 fund generating events. As we all know, that the music venue will be a Fillmore brand
33 which has enjoyed success in many major, major cities. Additional terms. We have,
34 LiveNation has agreed that events will conclude by 1:00 a.m., that alcohol will no longer
35 be served after one hour prior to event termination or if the event terminates at 1:00
36 a.m., then they would stop serving alcohol at midnight. The County will own the facility
37 and the County will own the tenant build out. The, LiveNation at the end of the term will
38 be able to remove its equipment but we will own the improvements made to our facility.
39 LiveNation has guaranteed a minimum of 70 events per year with acknowledged
40 objectives of 150 events per year. I'd like to point out that this is, in Miami, they've only
41 guaranteed 50 events per year, so we're, right off the bat, that's 70 guaranteed events
42 more. The booking policy at the venue. Both the County and LiveNation have heard the
43 County's interest, the community's interest in a diverse range of programming and
44 LiveNation has contractually covenanted and agreed to book events each calendar year



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1 that are balanced so as to ensure a reasonably proportioned blend of cultural
2 experiences, including varied types of music and other live performances appealing to
3 the varied tastes of the population, including without limitation, popular, rock 'n' roll,
4 Latin, blues, soul, jazz, folk, and country music. Finally, I mean, that's a brief
5 encapsulation of the terms, be we, to put this in its most basic terms, if you look at all
6 the fiscal benefits and you look at the revenue into the County and the taxes and what
7 we're getting and the services and the avoided costs of services that would be provided
8 in a full service lease, the rental that we would be getting would be something that
9 would be equivalent to, without the tax calculation, approximately \$32 per square-foot,
10 when you add in the fiscal benefit of our taxes, it works out to be in excess of \$60 per
11 square-foot. Thank you.

12
13 Council President Knapp,
14 Thank you.

15
16 Tim Firestine,
17 We did provide you the actual details on the fiscal impact on the project, tried to split it
18 out, state and County just to show you calculation of the taxes, to be clear that, you
19 know, property taxes are paid on the property as we both said. A couple of other things
20 just to be clear about. I mean, compared to other venues of this type that the County
21 owns. AFI, Strathmore, I mean, I can give you a long list, we have no responsibility for
22 paying the maintenance on the facility, not for paying the utilities which we do in those
23 other places. The major system replacement items, structural items are all the
24 responsibility of LiveNation. So basically, you know, we don't have any of those
25 responsibilities as we do in, as you know, those other facilities. I mean, right across the
26 street, AFI, much larger expenditure on that facility. We subsidize them \$500,000 a year
27 for that venue plus we're responsible for all of the maintenance on that facility. So, that's
28 where we are.

29
30 Council President Knapp,
31 Thank you very much. I will turn to Councilmember Ervin from District 5 for initial
32 questions, then we'll just work our way down the dais. .

33
34 Councilmember Ervin,
35 Thank you very much, I appreciate your briefing. I have heard it before. But this is a
36 great opportunity for everybody to be up to speed on where we are. A couple of
37 questions. One is, we have heard from many constituents, from not only District 5 but
38 from people around the County, voicing some concern about the deal. And so I want to
39 start by asking you a question about process. And I have been receiving e-mails about
40 why couldn't we have an open RFP process. I would like you to speak to that, number
41 one. And number two, I'm really concerned about the rumor mill really about 930 Club
42 because it's my understanding that this particular outfit had actually come to Silver
43 Spring earlier to try to possibly look at locating in Silver Spring sometime prior to this
44 current iteration. I just wanted you to speak to those two things. And finally, in the event



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1 that this Council is not going to support LiveNation in Silver Spring, what happens on
2 that block? If you could speak to all 3 of those I would appreciate it.

3
4 Tim Firestine,

5 Sure. On the first one, open RFP. First, I think, you can tell by the way we laid this out,
6 you know, this is was not from day one the type of Economic Development initiative that
7 was subject to an RFP process. So, first, from a precedent perspective, it was never a
8 part of the process. You approved the project twice and we never had a discussion
9 before about an open RFP. I think this is the type of project, because of the complexity
10 of it, we don't own a piece of land here. I mean, we're trying to attract a national
11 organization to come to Silver Spring to revitalize it with complications that, you know, it
12 has a third partner in the transaction that you have got to sort of work with. It is not
13 really conducive to an RFP process. And I also will remind you, you know, historically
14 the County Economic Development initiatives are not subject to the procurement
15 regulations, many of our projects in the past were not done through open RFPs, \$5 or
16 \$6 million to attract Macy's to Silver Spring wasn't an open RFP project to see if there
17 were other, you know, national companies that would be interested in that kind of an
18 incentive. And I can go down, you know, a list of projects where we don't conduct in an
19 open RFP. And this one was especially difficult because it is a three party transaction
20 and we don't have any land. I mean, we have no place to put the product. Second, I'm
21 not, I have no personal, first-hand knowledge about 930 Club's interest in Silver Spring.
22 I have heard second hand that they had looked around years ago at Silver Spring and
23 obviously didn't locate there at the time, not having anything to do with this project but
24 maybe looking at the other facilities but that is not something I have first hand
25 knowledge about. I think the obvious answer to your question about what happens if we
26 don't do this is it could sit vacant for another 18 years and I think that's the risk we
27 would take. This is a great fit with what we're trying to do in Silver Spring and if it does
28 anything to fix that side of the street I think that's going to be a huge accomplishment for
29 Silver Spring.

30
31 Councilmember Ervin,

32 And one final question and I'll be done, and that is, the economic benefit to Silver Spring
33 and the surrounding area, if you could speak to why you think that that is going to
34 happen.

35
36 Tim Firestine,

37 Well again, I think, I don't want to compare venues but that's one of the improvements
38 we think we have here is the previous venue had a kitchen, although, who knows if we
39 ever could have, you know, accomplished that with a kitchen. But the thought, there
40 was concern among, you know, local business owners that, what is the value to them of
41 having this venue there because it doesn't do anything for their restaurant businesses.
42 And you know, this project doesn't have a kitchen. Food will be served there but it's my
43 understanding the food is brought in or catered in. So it, you know, it still has value to
44 the surrounding businesses in Silver Spring.



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1
2 Diane Schwartz-Jones,

3 This facility will be bringing, you know, it's a 2000 patron facility, 2000 capacity, will be
4 bringing people there to enjoy live music and, you know, they will be making evenings,
5 many will make an evening of it and will be going to the restaurants in the surrounding
6 area, will be going to the shops in the surrounding area and so will help support the
7 investment that the County has already made in downtown Silver Spring.

8
9 Council President Knapp,

10 Thank you. Mr. Elrich, you have questions?

11
12 Councilmember Elrich,

13 I think you way overestimate the economic, the diverse economic punch of the clubbing
14 crowd and even the restaurant traffic. I mean, I just, I think that's an unrealistic
15 expectation. On Friday and Saturday night and sometimes on a Thursday night, you
16 can't get a seat in a downtown Silver Spring restaurant as it is without waiting in line. So
17 I don't know what another 1000 or 2000 people are exactly going to do to the lines at
18 the restaurants that are already not able to handle what's there. I guess I'm just very
19 concerned about the process questions and I have been concerned about them from
20 the beginning. I have to say that I heard about this and LiveNation over a week before
21 the project was declared dead with the Birchmere. I was told to stay tuned for an
22 announcement, not by the Executive's office, but I was told this was coming and that,
23 which raises concerns in my mind about how open the process was. This is not like
24 attracting Medimmune— or some high tech company to Montgomery County. We are
25 talking about a club and frankly, in my mind, there is no difference between 930 and
26 LiveNation. There is a difference between 930 and LiveNation and the Birchmere in
27 terms of the community's perception. It's much as I would say a difference between the
28 Majestic Theater and the AFI. The community was very excited about the AFI. I think
29 another movie theater venue is another movie theater venue. I think there was
30 excitement in the community about Birchmere because they saw that it was
31 complimentary to the ambience that the AFI brought to the area after the Birchmere.
32 930 and LiveNation are just clubs, no offense to the owners of either of the clubs, but
33 they're just clubs. I happen to like them both and that's fine, it is okay to be a club. But
34 I'm concerned that there is a lack of, that there was a lack of an open process, that this
35 could have been done by putting on the table what the County had to offer and inviting
36 people to bid on this process. I don't believe that word on the street is the way you do
37 Economic Development projects. I mean, I know in fact, that in other Economic
38 Development projects we actively solicit people to come here. We don't rely on word on
39 the street if we're trying to bring somebody to a major project or a space in Montgomery
40 County, we recruit. And so, this seems to fall somewhere between active hard recruiting
41 and just hoping the right person walks through the door. So I continue to be
42 uncomfortable with that process. I think the economics are the economics of almost any
43 venue that you would have brought there. Anybody that signed the triple net lease
44 would have had all the cost avoidances that you list here as, you know, the equivalent



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1 of County revenue are cost avoidance. I mean, if somebody is paying that cost then you
2 have to have the offsetting costs somewhere. I mean, it seems to me that it's a hyping
3 the economic benefit of this project well beyond what the economic benefit of this
4 project really is. But to be honest about it, I didn't view this as an Economic
5 Development project to begin with. I think most people in Silver Spring weren't looking
6 at the numbers and saying great, this is going to swell the County's tax rolls, it was
7 really seen as completing Silver Spring, you know, partly the issue of revitalizing the
8 other side of Colesville Road, but also contributing in a cultural sense to what people
9 wanted to see in Silver Spring. So the enthusiasm in the community that I recall was not
10 enthusiasm over dollars but enthusiasm over the type of venue. So to the extent that
11 this isn't any worse than the other deal, I also don't think it is any better. I appreciate the
12 fact that you all have improved things in this deal from what originally came over. But I
13 also don't think this is a whole lot to hold up and say this is a great economic triumph on
14 the part of the County. And I guess my question is, what would happen to LiveNation if
15 you said, we are going to hold an open process and we'll take your best bid? Is their
16 view is they would not bid?

17
18 Tim Firestine,

19 We are not going to do that. The County Executive has made it clear that, you know,
20 once this project entered the LOI phase and we had a signed LOI, we're not going to do
21 business that way. We don't do business that way in our other procurements. We don't
22 agree contractually with somebody to build a building and if another construction firm
23 comes along and says I can build it cheaper, we don't stop and reopen the process to
24 see if they can do it cheaper. We are where we are. The, and we think it was a valid
25 process. It was no different than the process that has been in place for this project, that
26 has been twice approved by the Council. And I'd also like to, we are not hyping the
27 project. If you have questions about the financials, we'd love to go into them. This is not
28 a hype.

29
30 Councilmember Elrich,

31 County, other County revenues, paid maintenance and paid utilities is not my idea of
32 what anybody would traditionally call a revenue. I mean, they're paying a traditional
33 triple net lease.

34
35 Tim Firestine,

36 And if you look at all the other projects where the County owns the building, this is one
37 where that is unique, needs to be factored into the equation because it's appropriate.
38 Strathmore Hall for example, you know, \$100 million project, you pay, you know, all the
39 utilities, all the maintenance, all the structural maintenance costs on that building for a
40 2000 seat venue.

41
42 Diane Schwartz-Jones,

43 There's also, just to understand, when you are talking about a base rent to put it into its
44 perspective when you're looking at surrounding market rents, you need to, as you



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1 yourself acknowledge Mr. Elrich, you need to add this back in so you can truly
2 understand what that rate is.

3
4 Councilmember Elrich,
5 But what is the market rate rent do you think?

6
7 Diane Schwartz-Jones,
8 For a venue of this type? I'm not an appraiser. I have heard anywhere from 10 to 20 per
9 square-foot, probably around 20 per square foot. But I don't know if that's an accurate
10 number or not. I think when you add in the other benefits that we're getting out of this,
11 we get significantly beyond that. But you can't look at the rent, the base rent in a
12 vacuum and that is the point of taking apart some of these numbers so you can see the
13 avoided costs that would otherwise be in a number.

14
15 Tim Firestine,
16 Keep in mind, this is a revitalization project, it's an Economic Development project,
17 we're trying to target growth in an area of Silver Spring where it hasn't happened. To
18 somehow believe that, you know, if you can charge market rent for an entity to go into
19 this location, well, you know, you don't need us. I mean, you know, the market will
20 construct the building and somebody will come and pay market rates for it. I mean,
21 that's just a fact. What we're trying to show you though, if you compare this to our other
22 projects of this type, there are none that we have done where the County owns the
23 facility and then has a return and minimizes the costs of the County that this building
24 does.

25
26 Councilmember Elrich,
27 But you are including as economic benefit, the reduced fees by community groups for
28 using a County building.

29
30 Tim Firestine,
31 That's right because otherwise this building would be used by this entity and would not
32 be available for community use. So, you have to add value from an economic
33 perspective, if a community wants to meet someplace and it can be done here at a
34 discount rate, there is value in that. So why wouldn't you factor that into the equation?

35
36 Councilmember Elrich,
37 Because I thought you said they were doing, was it 80 shows a year guaranteed, maybe
38 hoping 150 which leaves something like 200 nights a night a year when they're not
39 using it.

40
41 Tim Firestine,
42 But there's also the possibility they could program it more than 150 nights.

43
44 Councilmember Elrich,



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1 But you're starting at 80 saying you hope you get to 150.

2
3 Diane Schwartz-Jones,
4 You know, when you.

5
6 Councilmember Elrich,
7 That still leaves 200 nights.

8
9 Diane Schwartz-Jones,
10 Your point about the community use though, the public pays for every public building
11 that it uses. If you are going to rent a community center, if you're going to rent the
12 Woodlawn Manor, if you're going to rent the lodge at Little Seneca Creek or the
13 Anderson Pavilion, the community pays. There is no free use for that. For example, the
14 Anderson Pavilion for six hours, and by the way, the rental rate here is for seven hours,
15 you'd have to pay \$2,125. That's for a capacity of 10 to 25 people as opposed to a
16 capacity of 2,000 people. The lodge at Little Seneca, depending upon the weekday
17 versus weeknight, it's \$550 to \$2000 for seven hours and that's for a capacity of 300.
18 So, when you break this down on a per person basis and you look at the capacity and
19 you look at the other existing purely public facilities that have not a single penny of
20 private investment in them, this is not a bad deal for community use.

21
22 Councilmember Elrich,
23 I think it is very hard to determine if this is a good deal or a bad deal since there was no
24 bidding on the project. We have no idea what this is worth to the private sector and
25 given the numbers you're putting out there for what it costs to rent space, it sounds like
26 they're getting for \$7500 a month, they are not paying very much for the space they are
27 getting. They would be hard put to come up with comparable space and put on a show
28 for anywhere near that much money. I mean, I think, you know, I feel like I'm sort of
29 boxed into a situation where you have gone so far down the road that there is no way
30 out. And we have to accept this rather than have the opportunity to have a, what I think
31 would be a more open and perhaps more beneficial process. Just the fact that after the
32 complaints from the community, you were able to change the terms of this deal
33 indicates to me that there was give here. So how do we know how much give there
34 was? Do you think they gave everything they could possibly give?

35
36 Tim Firestine,
37 Yes, we do.

38
39 Councilmember Elrich,
40 In the second round.

41
42 Tim Firestine,
43 Yes.



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1 Councilmember Elrich,
2 Okay.

3
4 Tim Firestine,
5 And in the negotiations, you know, we clearly pushed much harder in areas, the lease,
6 were in negotiation, the development of the lease was a negotiation process and we
7 pushed much beyond, you know, what the final outcome was.

8
9 Councilmember Elrich,
10 But if they knew you weren't going to renegotiate or open the process, that's like
11 negotiating with one hand tied behind your back.

12
13 Tim Firestine,
14 I respectfully disagree with that.

15
16 Councilmember Elrich,
17 Well, then we're just going to disagree. I mean, I feel boxed in and I'm not very happy
18 about being boxed in.

19
20 Council President Knapp,
21 Okay. Jump out of turn, Councilmember Floreen does have a question. Councilmember
22 Berliner has to leave for a previously scheduled activity. So, I'll go to Councilmember
23 Berliner, then back to Councilmember Trachtenberg.

24
25 Councilmember Berliner,
26 Thank you Council President. And Mr. Firestine, you and I have had a number of
27 conversations with respect to this. I do want to say to you to, like my colleague, I do
28 perceive that the process used here taints everything and makes it very difficult for us. If
29 your opening comment you talked about that the County, quote, looked around, okay,
30 for operators. I have to say to you, what I find difficult about that and I will speak
31 specifically to the 930 Club because the 930 Club, one the owner of it is a Montgomery
32 County resident, two the 930 Club is the most well attended club of this nature in the
33 country. Three, they operate a facility in Howard County where the County Executive
34 basically fell down and said these guys are the greatest. If you are concerned about
35 sympathy among making sure that something is done right in a community that's very
36 nervous about it, these guys know how to do it. I ask you, how is it you can, quote, look
37 around and not pick up the phone and call the number one operator in the world for
38 these kinds of clubs who lives in Montgomery County and say, look, our deal with
39 Birchmere went south, we're trying to figure out what we want to do with this, are you
40 interested? Come on in and tell us what you would do. Why didn't you do that?

41
42 Tim Firestine,
43 I didn't feel it was necessary.
44



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1 Councilmember Berliner,
2 And why wasn't.

3
4 Tim Firestine,
5 Why didn't you ask that question when we brought this project to you twice before?

6
7 Councilmember Berliner,
8 I'm sorry Mr. Firestine, I'm not negotiating on behalf of the County Executive and if I
9 were, I would have said, I need more than one deal. And I want to know why you would
10 ignore a prominent member of our community who is based here, who has got the
11 number one operation in the country. I mean, okay, LiveNation may be great. But if you
12 have somebody in Montgomery County who has a track record, why wouldn't you pick
13 up the phone and say, talk to us, tell us what you would do? I'm serious. There has to
14 be a reason. There has to be a reason.

15
16 Tim Firestine,
17 Well, I think we have been clear on the process. We were moving quickly to try to
18 salvage a venue at this site. We had immediate interest from a national organization
19 that we thought could certainly provide the services at this area. We didn't hear, we
20 didn't hear from our local businessman during that period of time. We did hear from
21 other venues including a venue in New York City. Not a word.

22
23 Councilmember Berliner,
24 But you act though it's incumbent upon people to hear this in the ethers, which I'm
25 understood, people thought you were leveraging Birchmere, that you were using
26 LiveNation to leverage Birchmere. No one knew. You didn't pick up the phone and tell
27 people, you know what, we're done with Birchmere, we want, we're going in a different
28 direction here and we would like to hear from you. And so, I don't get this passive
29 approach here where, gosh we heard from this little club in Takoma Park, we heard
30 from this little club in where, New York, but we don't pick up the phone and call the best
31 operator in our local community to see if they want to play. They could have said no
32 thank you or they could have said absolutely. We'd just as soon play than have a
33 competitor play. Absolutely. We will play and we will offer you this.

34
35 Tim Firestine, I guess going back to the question that was asked earlier about 930's
36 interest in this area, and I think from Economic Development's perspective, since 930
37 Club had or IMP had looked at the area in the past and wasn't interested, I think that
38 may have been part of the reason there was no, you know, follow-up. Because it didn't
39 seem there was interest in that area. I will also say that after the LOI was signed.

40
41 Councilmember Berliner,
42 And when was that?

43
44 Tim Firestine,



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1 I did meet.

2
3 Councilmember Berliner,
4 Mr. Firestine, do you know when they met or.

5
6 Tim Firestine,
7 I did.

8
9 Councilmember Berliner,
10 Or when they had this interest or didn't have this interest, what the state of the Silver
11 Spring was at the time, the investment that the County made, had that come about at
12 that time?

13
14 Tim Firestine,
15 If I could finish on the second point.

16
17 Councilmember Berliner,
18 Alright sir.

19
20 Tim Firestine,
21 We did meet after the LOI was signed with Mr. Herwitz and his staff and did offer up a
22 different venue. At that meeting we thought there was interest in a much larger venue in
23 the County. I've also read some material from the past where that organization was
24 looking for a 5000 seat venue. We talked about a possibility of the arena project being
25 one that he could participate in. But there certainly didn't seem to be interest.

26
27 Councilmember Berliner,
28 Well Mr. Firestine, I guess, I really just, I do find the process, I appreciate that you did
29 not want to engage in a formal RFP but to use the RFP, from my perspective, is a
30 strong-man argument. There is a wide gulf between an RFP and reaching out to the
31 best in the business of local businessmen and saying, you know, this deal went sour,
32 we'd like to make sure that we have the best deal, we are talking to LiveNation, but we
33 would like to know. Because how, if you were in our shoes, how would we judge
34 whether this is a good deal unless we have anything to compare it to. I mean, you talk
35 about this as a economic revitalization. It isn't clear to me at all that it is an economic
36 revitalization project, that there aren't people willing to go in there now and say, hello,
37 we'll do this, you don't have to subsidize this, give us this piece of property, give us
38 access to this piece of property. So the whole premise that this is necessary has not
39 been tested and we can't test it.

40
41 Diane Schwartz-Jones,
42 I am just going to jump in on a couple of points that I think bear some clarification. First
43 of all, to say there is nothing to compare it to I think is inaccurate. There is in fact. There
44 is the Birchmere deal. And this deal was brought on when the Birchmere deal failed.



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1 The Birchmere deal in and of itself was not as good as this deal is. With the Birchmere
2 deal, the County was being asked to put in more money. With the Birchmere deal, the
3 perspective tenant which would have been.

4
5 Councilmember Berliner,
6 I accept that it is better than the Birchmere deal. I accept that.

7
8 Diane Schwartz-Jones,
9 But you stated, but this is the something to compare it to. Also, you indicated earlier that
10 this supposition that LiveNation was being used to leverage against Birchmere for a
11 better deal, that is not the way that we negotiate our contracts. When we negotiate
12 contracts, we have a covenant of good faith and fair dealing that is implied in every
13 contract as a matter of law in the state of Maryland.

14
15 Councilmember Berliner,
16 Can I ask a question then?

17
18 Diane Schwartz-Jones,
19 And we don't, we don't.

20
21 Councilmember Berliner,
22 When did you first have your conversation with LiveNation? Did you have your first
23 conversation with LiveNation before or after you suspended negotiations with
24 Birchmere?

25
26 Diane Schwartz-Jones,
27 I personally cannot answer that. But I just wanted to bear out the point, if I may finish
28 the point, and the point is that we, just as we would not leverage LiveNation against
29 Birchmere, we would not, once we have signed a letter of intent then leverage
30 somebody else who has the benefit of all of the terms out there in the public domain and
31 can come in and say something different. We wouldn't leverage that against the party
32 with whom we've entered into a letter of intent.

33
34 Councilmember Berliner,
35 And I appreciate that once you entered into the letter of intent stage that this became a
36 very different ballgame. I appreciate that. But let's go to the question of, Mr. Firestine, at
37 what point did the first conversation between the County and LiveNation take place?
38 Was Birchmere suspended at that point or was it before that?

39
40 Tim Firestine,
41 I can't recall. I think it was simultaneously. I mean, I think we were pretty much.

42
43 Councilmember Berliner,



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1 Simultaneously. And who brought LiveNation to the County? Was it the private party,
2 the Lee Development Company brought them to you? And what role do they have in
3 determining?

4
5 Tim Firestine,
6 I think if you listen to my discussion, the history of this project, the Birchmere was
7 brought to us by the developer of the Bethesda project.

8
9 Councilmember Berliner,
10 Right.

11
12 Tim Firestine,
13 So, it's not unusual for that to happen.

14
15 Councilmember Berliner,
16 And do you feel constrained in who goes into this facility by virtue of the Lee
17 Development family? Do they have a veto with respect to this?

18
19 Tim Firestine,
20 No. Absolutely not.

21
22 Councilmember Berliner,
23 Alright, so the Lee family, the Lee Development Company brought this opportunity to
24 you and you said, boy.

25
26 Tim Firestine,
27 My understanding, that it was pretty clear from media reports that LiveNation was
28 interested in the Washington area. As I indicated earlier, it was with respect to a
29 different product, it was called the House of Blues and they didn't feel that was a
30 product for Silver Spring but they did have this other product, the Fillmore, and so the
31 interest was out there, correct.

32
33 Councilmember Berliner,
34 I do appreciate that they had an interest in this market. They should have an interest in
35 this market. It's a wonderful market.

36
37 Tim Firestine,
38 They're already in the market too.

39
40 Councilmember Berliner,
41 And it will be, I am sure, a successful market. The question in my mind is, I don't, I really
42 don't get how we got to where we are. I don't understand how we ignored one of our
43 County's own who is the best in the country with respect to this and how we can now
44 assess whether or not this is the best deal that the County could have derived with



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1 respect to this. So I do find it be flawed at its core and that's what is troublesome.
2 Council President, I will, I appreciate you providing me this opportunity.

3
4 Council President Knapp,
5 Thank you very much. Councilmember Trachtenberg.

6
7 Councilmember Trachtenberg,
8 Thank you President Knapp. And I want to thank both Diane and Tim for being here this
9 afternoon. And, you know, I'm not sure the process was the best but what I would really
10 like to just make some comments on and ask for some definition on is really not so
11 much the process but the money. And it would seem to me that a music venue down in
12 that part of Silver Spring would be integral to the vitality of the community there and I
13 don't think any of us would argue that. What I'm concerned about though is the fact that
14 we are in challenging fiscal times. I think we all know that. And the revenue might not be
15 what we anticipate and the investments that are required to get this up and running
16 might be greater than what we anticipate. And that worries me and I want to have some
17 detail from you over oversight as we go along and what steps are you prepared to take.
18 Because, you know, typically when these kinds of venues are developed, the
19 investments that are necessary to get them up and running are oftentimes greater than
20 what was initially projected and again, considering the difficult fiscal times we might be
21 facing, it wouldn't be naïve, if anything it would be wise and prudent to undervalue the
22 revenue. So, if you could, Tim, Diane, talk a little bit about that because I'm really
23 concerned about that.

24
25 Tim Firestine,
26 One key thing on the project numbers. This project was put before you in the past at the
27 \$8 million level. It was a facility where, you know, the Birchmere had the possibility to
28 own it. So, you know, the County is putting its money in, putting it at risk so to speak
29 and they would eventually own the venue. We did change that for this deal. The County
30 owns the venue. LiveNation would not have the ability to buy it. The public investment in
31 this is limited to the \$8 million. So, if there are additional cost requirements beyond that,
32 those will be the responsibility of LiveNation. And we've made it clear that we are not
33 putting any more than \$8 million into the deal.

34
35 Councilmember Trachtenberg,
36 And so that's part of the agreement?

37
38 Tim Firestine,
39 Right. So, you know, one of the things in terms of cost to the public to look at this is it's,
40 what we really have is the carrying cost of the County dollars, not the carrying cost of
41 the state. In the little chart that we showed you before is, we would issue debt for our \$4
42 million share which means you'd have the interest costs on that over a 20 year time
43 frame, which is, the cost to the County, this is \$177,000 a year for those 20 years.
44 Everything else, you know, the tax revenue that comes in, all of that is, you know,



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1 assumed would go against or be above that amount. Now, on the chart that we showed
2 you clearly the larger taxes go to the state. So, I mean they, if you break it out, they
3 actually get a higher return than the County does on its money. And so, you know, we
4 have limited our exposure to the project. We have made it clear that we would not put
5 more than that amount of money into it, that any cost overruns would have to be paid for
6 by LiveNation..

7
8 Councilmember Trachtenberg,

9 Well, as someone who enjoys an occasional visit to the 930 Club and someone who
10 was raised in New York City, I am very familiar with the Fillmore experience. So I would
11 suggest that this indeed is an exciting opportunity. But here is something that I just want
12 to put out on the table as a thought. Which is, I would really hope that there would be a
13 real collaboration with LiveNation that benefits the community distinctly and, I note in
14 one of the pages that we were provided, there is a description about a payment that
15 would be made for the Silver Spring Celebration, that's programming and events right
16 downtown Silver Spring. It seemed to me that the amount isolated 30,000 isn't adequate
17 and I would hope that it would be increased and that there'd be other opportunities to
18 expand upon that kind of collaboration. Because I think that LiveNation would be in a
19 good position to help us continue to develop that community and clearly celebrate the
20 diversity that exists there.

21
22 Diane Schwartz-Jones,

23 I'm sorry Ms. Trachtenberg. We agree. I also wanted to point out in answer to your initial
24 question, there are a number of areas where these numbers are pretty conservative.
25 For example, the annual auction. We have not reflected any dollar value in these
26 numbers whatsoever of the benefit that will be realized because of that because we
27 don't have even a base to start with as a number. So, that's not in here. The real estate,
28 the tax revenues is very conservative and Mike Coveyou can explain how that is
29 conservative. The availability and the discount beyond 36 uses for the discounted
30 community use at the capped \$3000 per year, we didn't attribute any of that offset on
31 the actual fair market rent rate to use the facility for the community into these numbers.
32 So, there are a number of areas. And we did that intentionally because we didn't want to
33 create a overblown picture of what the financial return on this deal would be to the
34 County. But Mike can address the tax piece of it.

35
36 Michael Coveyou,

37 On the property taxes the numbers that I use are based on current assessments. And I
38 did inflate them over the years so that we would have a little bit of leeway built into
39 them. Also, what I did was, I estimated the property tax payments, including tax credits
40 for the enterprise zone and also for the Arts and Entertainment District because this
41 property is in both of them. The enterprise zone is really not in effect anymore. It
42 actually expired in December of 2006. There is a sort of a rollback provision in state law
43 that says if a project was underway in some way or another at the time of the expiration
44 of an enterprise zone then you could continue the tax credits. So I did estimate that



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1 there would be enterprise zone tax credits along with Arts and Entertainment District tax
2 credits for this. I don't think that LiveNation necessarily will be entitled to enterprise zone
3 credits because it's not exactly the same project that was underway as of December
4 2006 when the enterprise zone expired. So, the numbers on the property taxes for the
5 County property taxes are at least 20% lower than they in all likelihood will be. On the
6 other taxes, I, frankly the income tax, the County income tax, the fuel energy tax,
7 and the other revenues, I flat lined them also, also to make them a little bit more
8 conservative than they will be in real life. These numbers are actually based on the
9 fiscal impact model that we run for every Economic Development Fund project that we
10 ever do. And on the state taxes, the state taxes, you know, don't affect us directly but
11 we do see the benefits of them through highway use revenue grants and things like that.
12 The state taxes actually come from the state RAM model which is the Resource
13 Allocation Model that is used statewide for these types of the projects and – ran this for
14 us. These numbers are actually based on a project the size of the Birchmere. So they
15 are understated also. So the state tax revenues are also understated by a margin of
16 probably 20%.

17
18 Councilmember Trachtenberg,

19 I appreciate the information and it sounds like you used a conservative approach, which
20 I am very comfortable with and again, I would just stress that oversight over the
21 investments is critical in my mind and obviously that's why I raised the questions. So,
22 thank you very much for answering.

23
24 Council President Knapp,

25 Thank you. Council Vice-President Andrews.

26
27 Councilmember Andrews,

28 Thank you very much. Well, it seems to me the question before the Council is what is
29 the standard by which we make a decision about this project? Where do we go from
30 here? We know certain things. We know that this project compares favorably to
31 previous projects that we have done in the arts area in terms the County investment and
32 the County return. Specifically, with regard to Strathmore, with regard to AFI, and with
33 regard to the proposal negotiating with the Birchmere. So, that we know. We don't know
34 if there is possibly a better deal out there. But, we will never know that for sure, in my
35 view. The grass is usually greener when you look at it without having any other
36 perspective. And the question it seems to me before the Council is, is this deal in the
37 public interest? Is it good for Silver Spring? Is it good for the County? Is it in the public
38 interest? I think it is. I don't know that it's the best possible deal but I think the
39 consequences of rejecting at this point certainly outweigh, the risks are severe, I think,
40 of rejecting it. It is a proposal that has been hammered out with a lot of attention. I don't
41 have any reason to not believe that the numbers are solid and the bottom line is that it
42 would be a moneymaker for the County within a few years if these numbers are
43 accurate and they seem to be and they seem to be conservative numbers. So, we have
44 this before us and I think we can say that it is a good deal compared to what has gone



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1 before. If this were not completed, I think there would be damage to the County's
2 reputation and the County would have a more difficult time in the future negotiating
3 these types of projects because of the reliances that have been made and assumed by
4 the parties. So, for those reasons, I think that while, clearly, not everyone would have
5 done this the same way, probably collectively the Council would do many things
6 differently than the Executive and perhaps individually we would all do things differently
7 as well, but this is what the Executive in his judgment believes is a good deal for the
8 County. And I agree that it's a good deal for the County based on what has gone before
9 and the confidence I have in the Executive's estimates here of the economic benefits.
10 So I think the burden of those who would oppose this is very high because I think the
11 risks are great if it were rejected at this point. And I think it is safe to say that it has met
12 the test of being in the public interest.

13
14 Council President Knapp,
15 Thank you. Councilmember Praisner.

16
17 Councilmember Praisner,
18 Well, I think to begin with, if one were a supporter of additional publicly owned arts
19 facilities, that you have done a reasonably good job in presenting one to the Council for
20 funding. But as you know, from the beginning of our conversations, I do not support the
21 County continuing to acquire arts facilities where I believe the private sector needs to
22 carry the load. And that's been my experience sitting here with the quantity of previous
23 agreements that we have gone through. And I would just comment that, yes, they were
24 in different economic times and they were in different states of development especially
25 in Silver Spring, it was no guarantee that Discovery which has played a major role
26 would come to or remain in the County or grow in the County. The AFI deal was brought
27 to the Council. We had no role in the preliminary information on that deal unlike
28 Discovery where we did both legislatively and financially and in trying to get Discovery
29 to stay in the County. I have no problem as I've indicated, with providing financial
30 assistance to companies to attract and retain them to the County. The sunny day fund, I
31 am a sponsor of and that's the colloquial term for that. On the other hand, the question
32 is, what is the cost benefit analysis and what's the long term implications? So, I have a
33 couple of questions related to the material in front of us with that context, which should
34 not be a surprise to anyone on that side of the table because I've said that from the
35 beginning.. Number one, when we discussed, the previous Council, the Birchmere
36 operation, one of the issues or concerns was that the Birchmere did not intend to
37 purchase or own that building unlike its Alexandria site. And that issue was raised. And
38 the preliminary rationale for this project was not with the County continuing to own the
39 building. And so I want to be clear, your decision on that rests on the long term
40 economic benefit which you identify. Is that the rationale for the change?

41
42 Tim Firestine,
43 Well, I would say, yes, from an economic perspective we think it's a much better deal for
44 the County to continue to own this property based on the deal that we've worked out. I



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1 mean, we're putting \$4 million into this deal. We will end up with a 13 and a half million
2 dollar facility. That's, you know, once you take the state's share, the vault of the land,
3 plus the improvements that will be put in by the vendor. So, you know, from a County
4 return perspective, what we're trying to say is this is a much better deal because we
5 have an asset at the end of 20 years that is worth something, that we've only put \$4
6 million into and it has an ongoing return.

7
8 Councilmember Praisner,
9 It has a ongoing return as long as it has a tenant.

10
11 Tim Firestine,
12 Well, that's true, but.

13
14 Councilmember Praisner,
15 And after 20 years.

16
17 Tim Firestine,
18 We have a 20 year lease.

19
20 Councilmember Praisner,
21 I understand that but after 20 years, it's then the County's obligation should LiveNation
22 want to walk away, to deal with the modernization of that building and also to deal with
23 trying to find a tenant that can fit the capacity of that building. Correct?

24
25 Tim Firestine,
26 Well, again, major structural maintenance on the buildings is the responsibility of the
27 tenant during that 20 years, so, when it is turned over to us at the end of 20 years, I
28 mean it should still be in condition that it can be operated as a music venue. And, you
29 know, we would look for another operator.

30
31 Councilmember Praisner,
32 We disagree philosophically on that approach for the County but who is actually going
33 to do the construction of the building?

34
35 Diane Schwartz-Jones,
36 Well, the construction will be managed by the Lee Development Group as the developer
37 and the Lee Development Group will be seeking bids to get the construction work.

38
39 Councilmember Praisner,
40 But is, that is not a public process or an open process because it is the Lee
41 Development Group that will be making those decisions? I'm not clear on that.

42
43 Diane Schwartz-Jones,



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1 Well, both the County and LiveNation would be involved with that process. What we
2 have done in the past and we haven't had that level of discussion yet with Lee
3 Development Group.

4
5 Tim Firestine,

6 Yeah, I think we've mentioned that. I don't want to get too much into, there is another
7 phase that has to occur here. We have to work out the conveyance and development
8 agreement. So, you know, that's still under negotiations. Mr. Knapp, I indicated if you
9 wanted to talk about that I'd prefer if we did that part in closed session.

10
11 Council President Knapp, Okay.

12
13 Councilmember Praisner,

14 Well, then I would appreciate at some point that kind of information. So, has any
15 analysis been done if this facility at its capacity of number of the occupants and AFI and
16 Roundhouse Theater and Discovery all had events at the same time?

17
18 Tim Firestine,

19 I know we've had a traffic analysis done and Tina could speak to that, or there has been
20 a market analysis done and I think a traffic analysis has been preformed. But I would
21 also say, you know, when they do the Silver Spring Jazz Festival they have over 20,000
22 people who come to the Silver Spring Jazz Festival. So, you know, our only hope would
23 be that all of those venues would be filled routinely so that we get that kind of traffic
24 because it's pretty clear we can handle, you know, 20,000 participants in a festival.

25
26 Councilmember Praisner, Well, that depends upon the folks who attended the jazz
27 festival, if they believe that it was handled or it can be handled. Why would the County
28 give away naming rights for its own building?

29
30 Diane Schwartz-Jones,

31 We actually, we have the right to approve the naming of the building itself. It's the
32 interior portions of the building that we don't, aren't controlling the naming of. But the
33 exterior of the building itself is subject to our approval.

34
35 Councilmember Praisner,

36 Why wouldn't the interior be subject to our review since we own the facility and they are
37 only leasing it?

38
39 Diane Schwartz-Jones,

40 Because it is a standard element, or standard aspect of this type of an enterprise that
41 the facility inside, they control the naming rights. Just like in AFI. In AFI, they have the
42 ability to name things within the AFI space. That's their building, that's part of how they
43 conduct their business, their revenue generation and these are the kinds of the deals
44 that the music venue strikes for itself too. So within the interior of the premises where



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1 we are not, we have chosen not to have a say, they would have that and we'd have the
2 exterior rights.

3
4 Councilmember Praisner,
5 And we'd have no consideration of that at all?

6
7 Diane Schwartz-Jones, We don't have consideration, but there are limitations on the
8 types of names that can be used.

9
10 Councilmember Praisner,
11 How do, you made a point, Diane, about the programming diversity, that opportunity for
12 programming diversity. Do we have any enforcement role in that?

13
14 Diane Schwartz-Jones,
15 Well, the lease is the standard to which have performed, to have, the programming has
16 to be to a diverse genre of music and diverse community. What we have set up,
17 because we don't get into content, we don't control content, what we have set-up and
18 the LiveNation will be required to meet with on an ongoing basis throughout the term of
19 the lease is an arts and entertainment advisory council if you will, that's not the right
20 term, council, but a group that will advise the County Executive, that will look at all of the
21 arts and entertainment activities within the Silver Spring Arts and Entertainment District
22 and will provide advice and it's a broad range of interests that are reflected. It's
23 business, it's residential. There are, the Arts and Humanities Council will be on it, there
24 will be probably somebody from one or two of the arts and entertainment venues down
25 in Silver Spring to look at programming, to look at operations, to look at impacts, to look
26 at needs and advise the County Executive on that. And LiveNation has committed to
27 work with the County Executive on this.

28
29 Councilmember Praisner,
30 I'm not sure I understand. Is this additional advisory group exclusively associated with
31 programming or associated with the facility as a facility?

32
33 Diane Schwartz-Jones,
34 The facility, the arts, it's the Arts and Entertainment District as a whole.

35
36 Councilmember Praisner,
37 Yeah, I thought we already.

38
39 Diane Schwartz-Jones,
40 And.

41
42 Councilmember Praisner,
43 Had some kind of an advisory function that.



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1 Diane Schwartz-Jones,
2 And.

3
4 Councilmember Praisner,
5 In that context.

6
7 Diane Schwartz-Jones,
8 I don't know that it's arts and entertainment specific.

9
10 Councilmember Praisner,
11 We call it the Silver Spring Regional Service Center Advisory Committee.

12
13 Diane Schwartz-Jones,
14 Right. But this is a little bit different.

15
16 Councilmember Praisner,
17 Or the Central Business District or the Parking Lot District Advisory Committees. We're
18 going to have advisory committees stepping all over each other.

19
20 Diane Schwartz-Jones,
21 Well, this one is arts and entertainment specific.

22
23 Councilmember Praisner,
24 Yeah.

25
26 Diane Schwartz-Jones,
27 It's to look at the rule of, you know, how the arts and entertainment objectives, what
28 they are, how they are being met, how they are functioning within this area and – .

29
30 Councilmember Praisner,
31 So, you anticipate something comparable in Bethesda even though we already have
32 some structures in Bethesda?

33
34 Diane Schwartz-Jones,
35 No, we've had no conversations about Bethesda.

36
37 Councilmember Praisner,
38 And Wheaton?

39
40 Diane Schwartz-Jones,
41 No, this is to address the fact.

42
43 Councilmember Praisner,
44 No, I'm saying are you then thinking about.



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1
2 Tim Firestine,
3 No, we're not.

4
5 Councilmember Praisner,
6 Comparable advisory committees all over the County where we designate arts and
7 humanities?

8
9 Tim Firestine,
10 No, specifically to Silver Spring.

11
12 Councilmember Praisner,
13 Why Silver Spring?

14
15 Tim Firestine,
16 It's to address, you know, this venue being a different venue than what we have in those
17 other areas.

18
19 Diane Schwartz-Jones,
20 It's the interest expressed by the community.

21
22 Councilmember Praisner,
23 Well I understand the interest expressed by the community but we already have
24 advisory committees that are associated with trying to advise the government on a
25 variety of things including the Arts and Humanities Council. So, I just was trying to
26 understand. I would appreciate it if you would provide for me the, more details on the
27 Celebrate Silver Spring Foundation, as to when it was created, who's on the board, how
28 it operates, if it is a public or a private entity.

29
30 Tim Firestine,
31 We can do that.

32
33 Councilmember Praisner,
34 And again, if it has any other comparable structures elsewhere in Bethesda or
35 anywhere else and the rationale for why Silver Spring should have one separate. When
36 we had our initial conversation with, again public conversation with the Birchmere and
37 Mr. Edgerly and the Lee Development, there was a document that was provided from
38 the Lee Development Group that related to their expectations. Has anything like that
39 been agreed to or anticipated by the Executive Branch?

40
41 Tim Firestine,
42 Well, as I indicated, if you want to talk about that, we would prefer to do it in closed
43 session.



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1 Councilmember Praisner,
2 Okay. Alright. Then at some point I would appreciate that.

3
4 Council President Knapp,
5 Okay. Thank you. Councilmember Leventhal.

6
7 Councilmember Leventhal,
8 Okay. The theme of my remarks is going to be on the one hand, on the other hand.
9 [laughter].

10
11 Council President Knapp,
12 Kind of a tennis game within himself.

13
14 Councilmember Leventhal,
15 Right. I think you made a very good briefing here today Tim and Diane. I think you make
16 a strong case for this deal that has been negotiated in the Executive Branch. There
17 probably is no perfect deal. On the other hand, I have to say that when you say, if this
18 deal does not go through then there will be 18 years where this property will be
19 undeveloped. Eighteen, you sure it's not 16 and a half, I mean, that seems a little, that
20 seems to be kind of just thrown out there. Silver Spring is a different place today than it
21 was 18 years ago. This is a better deal from a bottom line perspective than AFI if you're
22 only counting how many dollars are you putting in, how many dollars are you getting
23 out, but the AFI Theater represented a very important pump priming for downtown Silver
24 Spring. Which has been fabulous. And so the ability to negotiate a deal for the property
25 across the street from AFI, we're in a very different place today than we were when we
26 were negotiating for the AFI. So, I'm not sure we're comparing to apples to oranges
27 although I agree we're still pumping a bunch of money into AFI and we would not be
28 pumping ongoing subsidies into this. I sure hope LiveNation is not counting on a lot of
29 revenue from naming rights. Strathmore has not been very successful there. So, I hope
30 naming rights, which Ms. Praisner brought up, are not a big part of this deal from their
31 perspective because I think there is a lot of hope there and often not a lot of outcome.
32 You know, should we go for this deal? I understand that the Executive Branch has
33 negotiated this. I understand that the Executive Branch feels that the good name and
34 the reputation of the County is somewhat on the line here. I think those are important
35 points to consider. I have said, when neighbors have talked to me about this, I don't
36 think it is our job to be nine independent Directors of Economic Development and get in
37 the middle of deals and negotiate them ourselves. I mean we have a, there, to the
38 extent people are saying is there a process, yes, there is a process. The process goes
39 like this. We elect a County Executive, he appoints an Economic Development Director,
40 he appoints other staff, those staff negotiate a deal, if it requires public funding they
41 come to us, and either we vote for the public funding or we don't. And that's what we're
42 trying to figure out now. I have been listening to these comments and if I were you, I'd
43 be feeling pretty good, I mean, if you were counting votes, the comments have been
44 relatively favorable. I'm firmly on the fence. You know, I don't think that if we, I don't



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1 think that if we walked away from this particular deal that the situation in Silver Spring is
2 anywhere near as dire. And I'm not sure, you know, I live right nearby, I'm not sure that,
3 you know, the one thing we've just got to have to make Silver Spring work, it just won't
4 work without a nightclub, could be a nightclub, could be a hotel, could be a restaurant,
5 could be something else, I think something will happen there and it is a valuable
6 property. So, then the question is really focusing on this. And then the other question
7 which Mr. Berliner emphasizes and obviously Mr. Herwitz is, lives in District 1 and Mr.
8 Berliner is, you know, exercised on Mr. Herwitz's behalf, and Mr. Herwitz has made a lot
9 of noise in the community and we're getting a lot of communications from people who
10 think the 930 Club would be better. I, like you Tim, recall that there were a lot of
11 neighbors who said to me, what we really want is the Birchmere because that's the
12 image that we want. That fits our demographic niche. Of course, the people we were
13 hearing from were baby boomers, we hear that all the time. We didn't hear from other
14 people but what the baby boomers, who happen to be leaders in the civic movement
15 say is, what we don't want is a bunch of kids with, you know, punk hairdos and safety
16 pins through their nose and making a lot of noise, we don't want the 930 Club. I heard
17 that. Now, I know that the 930 Club doesn't just do that. I'm, I've been to concerts at
18 Meriwether Post Pavilion. I used to go to the 930 Club when I was young and single and
19 cute. And you know, I understand it. [laughter]. I understand it's a, you know, it's a wide
20 range of things. I'm familiar with all of this. But you can't really get this right. If the
21 County Executive had said, great news, guess what's coming to downtown Silver
22 Spring, the 930 Club, the reaction probably would have been equally as negative and as
23 positive. It's been a mixed reaction as it has been to LiveNation. So, the same issues
24 about alcohol, the same issues about noise, the same issues about traffic, the same
25 issues of this isn't my favorite kind of music so I don't want any music that's not my kind
26 of music would probably have occurred too. There probably would have been a similarly
27 negative reaction. Was there is a open process? No, there was not. Let's not pretend
28 there was. There was not. Should there have been an open process? Well, I remember
29 the months vividly, the weeks in which the Birchmere deal was falling apart and I
30 remember on the part of my good friends at the Lee Development Group, there was
31 some sense of panic and there was anxiety and there was a desire to find another deal
32 quickly. And let's just admit it, that's what happened. And so a deal got put together. So,
33 is it a good deal or not? You describe it as being a pretty good deal. I think you make a
34 pretty good presentation here. Was it fair, was it a fair and open process? It wasn't. In
35 the long run, will Silver Spring survive and thrive with or without the Fillmore? It will.
36 Silver Spring is doing very well and I have great confidence in its future, with or without
37 a nightclub. So, I, you know, I think this is a very interesting situation that we are in.
38 There are some potential downsides that I see to, Ms. Praisner outlines, having the
39 County invested in this facility for the long time. A nightclub seems like a pretty good
40 use for this facility. 930 Club versus Fillmore, would it have fairer and would it have
41 been a, just a decent, wouldn't it have been nice for us to offered a chance to the local
42 guy to have a crack at this business? Yeah, it would have been, in hindsight, maybe,
43 you know, it would have been nice to do that. But that didn't happen so we are where
44 we are today. It sounds like most of the Council is pretty cool with this. But we will see



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1 when we get to the CIP. We are not voting today. There are, you know, questions yet to
2 be asserted. There will always be constituents who don't like anything that is proposed
3 and there will always be constituents who don't like any public investment in any private
4 profit making venture. And that's not easy to get over. On the other hand, there will
5 always be, I think we are way past the point where Silver Spring goes begging. I don't
6 think Silver Spring goes begging anymore. And so, do we have to jump on this deal
7 because it is in front of us? I'm not necessarily persuaded that we do. And I don't think
8 that the County necessarily suffers if the Executive Branch negotiates a deal and a
9 separately elected branch of government decides we don't think it is a good deal. So,
10 again, I'm firmly on the fence. I'm weighing this. I'm pretty close to this. I do understand
11 the issues involved. And I think Silver Spring will do just fine. And I think the Lee
12 Development Group will probably do pretty well with this real estate regardless of
13 whether this specific deal is what ends up happening there or whether something else
14 happens there. I don't think the north side of Colesville is going to lay fallow for 18
15 years. I, and I don't think that's a real fair scenario to lay out.

16
17 Council President Knapp,
18 We've got two more Council questions. Councilmember Floreen.

19
20 Councilmember Floreen,
21 Thank you. I don't really have a question but based on everybody else's comments, I
22 just wanted to make a couple of observations. I think you've done a pretty good job of
23 laying out the math and the nature of the concerns. I think the County's credibility in
24 terms of its ability to negotiate with the private sector is very, very important. In the six
25 years I have been here, I've seen many an Economic Development initiative grant that's
26 come before us and we've asked questions and we by and large have deferred to the
27 County Executive's decision and recommendation on I think nearly all of those, if not
28 every one I've participated in. I think that this County has made a big commitment to
29 entertainment one way or the other. We have contributed mightily to pretty much private
30 sector or non-profit arts activities in many parts of the County. And I think this is a neat
31 idea. I really think it is okay to have some fun which this really reflects in a way that
32 many of our other investments have not reflected. I really do think Silver Spring
33 continues to be a work in progress, I really do, based on the feedback we got when
34 someone here suggested, why don't we move Park and Planning to Rockville, you'd
35 think the world had come to a end. Because of the business community's desire to have
36 a significant governmental presence and continued investment in Silver Spring. So I
37 think this is another part of that and I look forward to what I really consider the more
38 important part, which is the next step. This is kind of the, we're spending a lot of time
39 talking about a lease for a piece of property that you don't own and hasn't even been
40 through some kind of approval process. So that, this is really interesting and a good first
41 step. But it is only the first step. And I think that's important for us all to keep in mind.
42 But like, I'm good with fun and I think this is. We don't have enough of that. We are
43 pretty academic. We spend way too much time reading lengthy papers worrying about
44 lofty ideals when a lot of our residents would like to have places like this that they can



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1 enjoy within the Montgomery County community. And I'm going to, you know, I really am
2 going to defer to your judgment as to who's the right party to get that achieved. As you
3 know, the devil is always in all of these details and there are many, many additional
4 bumps I think to be gotten over before this comes to reality in Silver Spring. But I think
5 given the County's other kinds of investments in Silver Spring that are hopefully about to
6 evolve for the community, the library, the civic center, the transit station, this is going to
7 be a nice compliment to all of that. The financials are important. And you've worried
8 about them as you have with other projects. We have consistently seen long lists of
9 other ways that we have funded and supported businesses that we felt to be important
10 in Montgomery County, through tax abatement programs, through a number of public
11 private partnerships. And I think that's a good thing for Montgomery County and I think it
12 is a good message to send to the private sector that this County is willing to engage and
13 have a thoughtful conversation that is pretty well exposed to the public. And I think that's
14 what is important about this conversation. And I thank you for being here and taking us
15 through all of this.

16
17 Council President Knapp,
18 Thank you very much. Councilmember Elrich followed by Councilmember Ervin will
19 have the last words.

20
21 Councilmember Elrich,
22 I'm going to go to whatever club is in Silver Spring because liking live music.

23
24 Councilmember Leventhal,
25 You are still single and cute.

26
27 Councilmember Elrich,
28 Thank you George.

29
30 Council President Knapp,
31 And he's all about fun too.

32
33 Councilmember Trachtenberg,
34 I protest.

35
36 Councilmember Elrich,
37 That threw me off track there. [laughter].

38
39 Council President Knapp,
40 Yeah, totally threw him off there.

41
42 Councilmember Elrich,
43 And I will give you my music programming requirements later.



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1 Councilmember Trachtenberg,
2 About Marc, that's really where the fun begins.

3
4 Councilmember Elrich,
5 But, more seriously, I mean, things are, couple things I'd like to know, I'd like to know
6 how you all have factored in, whether you have factored in, in terms of costs, the costs
7 of policing at the end of the night because disbursing a crowd of that size is not
8 something that's just going to be open the doors and see where people go. Particularly
9 since, the nature of stand up clubs, and this is true whoever the stand up club is, that
10 basically you stand up and you drink most of the night, that's a reality. And so, knowing
11 what that means, means we need, I mean, I would like to know what, for example, Chief
12 Manger thinks he would probably need to do there and what are the costs associated
13 with that? And I'd like, you know, I think the Council has to think about this in the future,
14 about what processes are right processes. I think there are times when negotiations,
15 quiet negotiations make absolutely perfect sense and I think there are times like this
16 when what was done makes absolutely no sense. And that you put us in a position
17 where it may be if we kill, if we say no to this, that that we cause an interminable delay
18 or an unspecified delay in something happening in Silver Spring. And I would have
19 thought, I would have hoped that more discussion with us about parameters and about
20 what a deal ought to look like or even about whether negotiations were important and
21 what role the community should play in a decision, should have preceded a decision
22 to sign the letter of intent. And I feel very strongly that that should not have happened
23 with, basically what you've done is present us with a fait accompli. Like you said, you
24 are not going to reopen negotiations. You are not going to do anything. So, you've
25 closed the door as far as you're concerned and so we can either kill this and face the
26 consequences or accept it. And that's just an unfortunate, I think, position that we
27 should have to be in. And I think the Council should have some discussion about, how
28 do negotiations go forward, how do we avoid, I mean, there's the issue of, do we look
29 like we can't be trusted when we negotiate? And there is also an issue to me, do we
30 look like we're too easy to negotiate with? One of the, you know, we could point out this
31 is better than other deals, I'll be the first to acknowledge this is better than other deals,
32 but better than other deals doesn't make it a good deal, it just means that other deals
33 weren't done the way they probably should have been done and this is closer and better
34 than it was, but it doesn't make it the best deal or we don't even know if it's the best we
35 could have gotten. So, I would like to have some ongoing discussion about, you know,
36 how we do these kind of projects and how we make sure that we protect the County's
37 interest and the public interest in all of this.

38
39 Tim Firestine,
40 Can I just say a comment?

41
42 Council President Knapp,
43 Sure.



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1 Tim Firestine,

2 I mean, and those are all fair questions Marc and we'd be happy to sit down and talk
3 about how we have done Economic Development historically. But you know, put
4 yourself in our seat. Our seat says that twice the County Council approved this project
5 without an RFP. I do think it is impossible to negotiate a deal with the Council sitting at
6 the table because there would be 9 different opinions about what the terms are. But we
7 certainly are open to direction from you. As you know, all Economic Development Fund
8 projects above \$250,000 do come to the Council. We talk to you about them. You know,
9 that's the time to tell us what your concerns are, you know, what we should do, some of
10 the things you'd like to see included in the deal. So, we'd be happy to talk about that as
11 we go forward. I understand.

12
13 Council President Knapp,

14 We were so close, so close. I'll give the Councilmember from District 5 the option, do
15 you want to have the last word or do you want to go now?

16
17 Councilmember Ervin, I'll wait.

18
19 Council President Knapp,

20 Councilmember Praisner.

21
22 Councilmember Praisner,

23 Well, again as the drafter of the legislation and of the person who worked with the
24 Executive Branch on the process for the Economic Development Fund, the Council had
25 an opportunity on most Economic Development Fund documents that we have
26 received, it is not a done deal until the Council signs off on it. And the Council can either
27 approve it automatically, request an extension of time, or request a meeting on the
28 issue before it is finalized. That's the content of the Economic Development Fund
29 process. And with all due respect Tim, what the Council approved in the past was the
30 Birchmere deal. Whether you like it or not, it is not this proposal.

31
32 Council President Knapp,

33 Councilmember Leventhal.

34
35 Councilmember Leventhal,

36 Very quickly. You will hear this from me a lot. We often fall into the trap of believing in
37 the that the public that we hear from who e-mails us, calls us, and testifies here and
38 knows where the 7th floor of this building is located and where the parking is and knows
39 where Park and Planning's hearing room is located, we often fall into the trap in
40 believing that that's the whole public. And so, the people we hear from like the music
41 that is offered at the Birchmere. Mostly white artists with acoustic guitars, folk and
42 country. Those were the people we heard from. But there is a whole lot of other people
43 who just don't e-mail us a lot, who aren't really all that interested in the things that we
44 do, zoning just isn't their bag and they don't, you know, they don't know my e-mail



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1 address by heart and, you know. So, there's actually an awful lot of people in
2 Montgomery County who listen to hip-hop. There are a lot of people in Montgomery
3 County who really are going to enjoy all kinds of music, -- and salsa and all kinds of
4 other types of music. So, this has been a really, music is so fascinating, we could talk
5 about music all day, it has been such a fascinating look at Montgomery County's image
6 of itself and who are the people who interact with us. Let's face it, they're affluent white
7 people, okay, and they like the music that they grew up listening to, so, you know,
8 Crosby, Stills, Nash and Young, whatever it is, I mean there's a certain demographic of
9 --. [INAUDIBLE]. Right. I mean, it happens to be my demographic.

10
11 Council President Knapp,
12 Okay. Alright. We're devolving here. Alright.

13
14 Councilmember Leventhal,
15 Happens to be my demographic.

16
17 Council President Knapp,
18 Hold on, hold on.

19
20 Councilmember Leventhal,
21 I have an important point.

22
23 Council President Knapp,
24 Mr. Leventhal, finish.

25
26 Councilmember Leventhal,
27 I'm almost done. Okay. The point is that it is very difficult to discern what community
28 uses really ultimately will be if the structure gets up and running because the voices that
29 we are hearing from, with all due respect to my constituents and it is my own
30 demographic, baby boom, you know, et cetera, are not representative of all the people
31 who will end up using this facility if it's built. And this is a great example of that.

32
33 Council President Knapp,
34 Councilmember Ervin.

35
36 Councilmember Ervin,
37 Thank you very much. I have really appreciated this robust conversation and I have to
38 say that Councilmember Leventhal actually began my comments. And I wanted to
39 speak to the fact that, first of all, Silver Spring has been designated as an Arts and
40 Entertainment District. This is precisely what should go in at that corner on Colesville
41 Road, in my opinion. But I want to talk about who is this community that we keep being,
42 that keeps being referred to. And although I think George is right, we hear from those
43 folks that he's just described, but the demographics in Silver Spring that I hear from are
44 my son's age. I have a son who is 20 and a son who is 26 and they vote for LiveNation.

